

Kaess Law, LLC

Civil and Criminal Law for Businesses and Individuals in State and Federal Courts

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CAMPAIGN FINANCE &
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July 30, 2011

Jeff Sigurdson
Assistant Director
MINNESOTA CAMPAIGN FINANCE BOARD
Centennial Office Building, Suite 190
658 Cedar Street
Saint Paul, MN 55155

VIA FAX AND US MAIL

651-296-1722 (CFB)

**CONFIDENTIAL RESPONSE
TO CFB COMPLAINT**

Re: **In Re to the Campaign Finance Board Complaint against The Conach
Group/Mike Campbell
COMPLAINING PARTY: Karl Bremer**

Dear Mr. Sigurdson,

Please be advised that I have been retained by The Conach Group to respond to the above listed complaint. Please accept this letter as a response to that Notification of Complaint dated July 27, 2011 and request by the Minnesota Campaign Finance Board (hereafter "CFB") for information from The Conach Group.

First, let me be perfectly clear, despite the unfounded accusation of Karl Bremer, neither Mr. Campbell nor The Conach Group provided lobbying services or was a lobbyist as defined by Minnesota Statute Minn.Stat. § 10A.01, subd. 21; Minnesota Rule 4511.0100; or Advisory Opinions of the Minnesota Campaign Finance Board for the City of Stillwater.

My client provided strategic advice, research and messaging related to legislative initiatives of the City of Stillwater. He did not attempt to influence legislative or administrative action, communicate with public officials or urge others to communicate with public or local officials as defined by Minnesota Statute. At no time did my client ever have contact with any public official for the purpose of advocating a position on behalf of the City of Stillwater.

I have enclosed my client's **actual** contract and Memorandum of Understanding with the City of Stillwater.¹ I will concede that the contract is poorly drafted, and significantly misrepresents the scope of what The Conach Group did and is doing for the City of

¹ Please note that this contract differs from the purported contract provided in the complaint.

Stillwater. However, it is clear, based upon statements made by the parties that The Conach Group was not retained to lobby for the City of Stillwater, and no one from The Conach Group actually lobbied for the City of Stillwater.

Other than an outdated proposal from The Conach Group and an unexecuted, inaccurate contract, the complaint of Mr. Bremer contains no evidence, either direct or indirect that anyone from The Conach Group, at any time had any contact with a public official advocating for any position on behalf of the City of Stillwater.

Because my client did not lobby and was not a lobbyist for the City of Stillwater the remaining requests for information from the CFB are moot. However, with the hopes of resolving this issue short of litigation, which we would assume would be quite costly and time-consuming my client has agreed to provide these limited answers.

Please be advised my client is not waiving any rights or objections nor conceding that the he is a lobbyist by supplying the following limited information to the CFB.

2. **Copies Page one of the contract contains "Section I, Nature of Work". Regarding the St. Croix River Crossing the contract provides that the Conach Group will "secure the required support of the ... State of Minnesota, and any administrative Department. .. for the approval and funding of the pending St. Croix River Crossing at Stillwater." In carrying out the work described in support of the St. Croix River Crossing did you or any member of the Conach Group communicate with any County Commissioner, State Legislator, staff of a State Legislator, the Governor, staff of the Governor, members of the Metropolitan Council, staff of the Metropolitan Council, or the commissioner, deputy commissioner, or assistant commissioner of any state agency? If yes, please provide a listing of communications in which you or members of the Conach Group participated. The listing should include the person contacted, the date of the communication, and the nature of the communication (phone call, meeting, etc.) as well as the approximate length of the communication. .**

Mr. Campbell did not have any communication with any County Commissioner, State Legislator, the Governor, staff of the Governor, members of the Metropolitan Council, staff of the Metropolitan Council, or the commissioner, deputy commissioner, or assistant commissioner of any state agency on behalf of the City of Stillwater related to any issues of concern for the City of Stillwater.

He did have limited communication with one legislative staffer requesting certain research information; however that communication was not to urge that staff

member to advocate on behalf of any legislative position on of the City of Stillwater, it was simply to gather information.

This activity is not prohibited lobbying, nor does it make the person requesting that information subject to the registration requirements as a lobbyist pursuant to CFB Advisory Opinion 409 which I have attached.

3. **Section I further provides that the Conach group will work to secure state funding for the purchase of the " ... MN Zephyr Railroad Right of Way ... support for the New Armory Project and Phase III of the Levy Wall Project." In carrying out work on these projects did you or any member of the Conach Group communicate with the officials or staff members listed in question 2? If yes, please provide a listing of the communications as described in question 2?**

Please see the answer to question number two.

4. **In carrying out the work described in Section I have you or any member of the Conach Group participated in communications that urged individuals to contact elected or appointed officials in support of the St. Croix River Crossing, MN Zephyr Right of Way, New Armory, or Levy Wall Project? If yes, please provide a list of the communications and the date on which they occurred.**

The extent of Mr. Campbell's contract with the City of Stillwater was to provide strategic advice, research and messaging related to legislative initiatives of the City of Stillwater. He did not attempt to influence legislative or administrative action, communicate with public officials, or urge others to communicate with public or local officials as defined by Minnesota Statute.

5. **Please describe the nature of the work you or other members of the Conach group have provided to the City of Stillwater under the terms of the contract that was not disclosed in your answers to questions 2 through 4.**

Please see answer to question 4.

6. **The rate of compensation provided in Section IV of the contract is \$1, 500.00 per month. As of the date of your response has the Conach Group received payment(s) for services provided under the contract? If yes, please itemize the amount of the payments and the dates on which there were received.**

The contract between The Conach Group and the City of Stillwater is public information; The Conach Group was paid \$1,500 per month for consulting services.

7. **Has any individual other than yourself provided services under the contract? If so, please identify each such individual.**

Mr. Campbell is the sole owner and principal consultant for The Conach Group, no other individual provided services under this contract..

8. **Is any individual other than yourself entitled to any of the consideration paid under the contract? If so, please identify each individual and explain the division of the compensation.**

Please see the answer to question 7.

Once again I want to reiterate that Mr. Campbell is not a lobbyist nor is he or his company retained by the City of Stillwater to engage in activities that could be construed as lobbying.

It is clear that this complaint is frivolous and is not based on actual facts or a complete understanding of the law. The limited "evidence" the complaining party provided is outdated and inaccurate, in short no "reasonable person" could believe based on this scant evidence that Mr. Campbell is a lobbyist or that the City of Stillwater retained Mr. Campbell to lobby for them.

This complaint is nothing more than cheap political theatrics orchestrated by a political opponent of the current Mayor of Stillwater and more specifically the Stillwater Bridge Project. It is my sincere hope that the Campaign Finance Board will not allow itself to be used by a political "gadfly" as a weapon in what clearly is a policy dispute.

Neither Mr. Campbell nor the The Conach Group has engaged in any lobbying on behalf of the City of Stillwater. If you believe it would be beneficial to resolve any questions regarding the contract between The Conach Group and the City of Stillwater, my client would be willing to appear in front of the Campaign Finance Board, if however you feel that is unnecessary I would ask that the CFB dismiss this complaint.

For any questions or to discuss this matter further please contact Ryan Kaess at the information above.

Sincerely,

A handwritten signature in black ink, appearing to be 'RK' with a long horizontal stroke extending to the right.

Ryan Kaess
Attorney At Law

Cc: Mike Campbell, The Conach Group

MEMORANDUM OF UNDERSTANDING

This Memorandum is made this 5th day of April, 2011 between the City of Stillwater (Client), and The Conach Group (Consultants).

Introduction

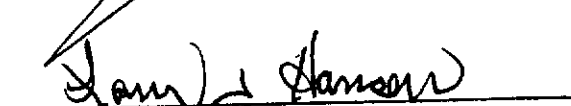
The Client and Consultants have discussed a definitive contract whereby Consultants would provide services to Client, however the parties desire additional time to evaluate all elements of a definitive arrangement. They have however reached a temporary understanding as follows:

1. The parties will continue to negotiate the terms and conditions of a definitive contract for a period of thirty (30) days.
2. The Consultants will begin work for the Client beginning April 6th, 2011, based upon a tentative budget of \$1,500 per month, as discussed at the April 5th, 2011 City Council Meeting.

5th IN WITNESS WHEREOF, the parties have caused this Agreement to be executed this day of April, 2011.

CITY OF STILLWATER


Ken Harycki, Mayor


Larry D. Hansen, City Administrator

THE CONACH GROUP

By: 

Its President

LEGISLATIVE CONSULTANT CONTRACT
2011

This contract is made this 19th day of April, 2011, between the City of Stillwater, a Home Rule Charter City of the third class, existing under the laws of the State of Minnesota, with offices at 216 North 4th Street, Stillwater, Minnesota 55082, ("City"), and The Conach Group, ("Consultant").

RECITALS

The City desires to retain the services of the Consultant to obtain Legislative support for programs or projects that are listed in Section I of this Agreement. Consultant agrees to perform these services for the City under the terms and conditions set forth in this Contract.

In consideration of the mutual promises set forth herein, it is agreed between the City and the Consultant as follows:

SECTION I.
NATURE OF WORK

A. ST. CROIX RIVER CROSSING

1. To secure the required support of the Federal Government, State of Minnesota, and any administrative Department of either entity for the approval and funding of the pending St. Croix River Crossing at Stillwater.

B. GENERAL SERVICES

1. To secure Minnesota Legislative funding for the State purchase of the MN Zephyr Railroad Right of Way as an extension of the State Trail system, support for the New Armory Project and Phase III of the Levee Wall Project.
2. General Services work will include Federal and State projects given prior authorization by the City Council.

SECTION II.
PLACE OF WORK

It is understood that Consultant services will be rendered largely at the Consultant's office and the State of Minnesota Capitol and not in the Offices of the City. Travel to Washington, D.C. or other remote locations is not contemplated and will require prior authorization by the City Council.

SECTION III.
TIME DEVOTED TO WORK

The City will rely upon the Consultant to put forth such effort as is reasonably necessary to fulfill the spirit and purpose of the Contract.

SECTION IV.
COMPENSATION

The City will pay to the Consultant as follows:

\$1,500 per month or \$18,000 per year.

SECTION V.
DURATION

This Contract will be effective from April 1, 2011 and continue until 60 days after written notice of termination is provided to Consultant. However, the nature of the work done by consultant will be reviewed at least quarterly to determine whether work should be deleted or added based upon changed circumstances.

SECTION VI.
STATUS OF CONSULTANT

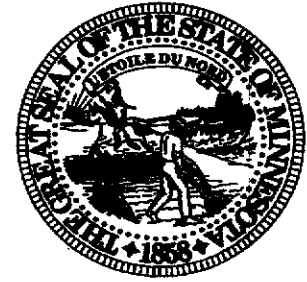
This Contract calls for the performance of the services of the Consultant as an independent contractor and the Consultant will not be considered an employee of the City for any purpose.

SECTION VII.
INDEMNIFICATION

Any and all claims that arise or may arise against the Contractor, its agents, servants or employees as a consequence of any act or omission on the part of the Consultant or its agents, servants or employees while engaged in the performance of this Contract shall in no way be the obligation or responsibility of the City. Consultant shall indemnify, hold harmless and defend the City, its officers and employees against any and all liability, loss, costs, damages, expenses, claims or actions, including attorney's fees, which the City, its officers or employees may hereafter sustain, incur or be required to pay, arising out of or by reason of any negligence or willful act or omission of the Consultant, its agents, servants or employees, in the execution, performance or failure to adequately perform Consultant's obligations under this Contract.

Minnesota

Campaign Finance and Public Disclosure Board



**THE FOLLOWING PUBLICATION DOES NOT IDENTIFY
THE REQUESTER OF THE ADVISORY OPINION, WHICH IS NON PUBLIC DATA
under Minn. Stat. § 10A.02, subd. 12(b)**

Advisory Opinion 409

SUMMARY

Communication with officials for compensation may bring an individual within the definition of a lobbyist. Once a person is a lobbyist all support for the lobbyist's communication is reported as lobbyist disbursements. Underlying support activities for a project are not lobbyist disbursements unless they support a lobbyist's communications.

FACTS

As the attorney for a nonprofit corporation, ("The Nonprofit Corporation") you ask the Board for an advisory opinion based on the following facts:

1. Minnesota has a number of legislative entities that are experts in various areas of public policy and are charged with making recommendations to the full Legislature regarding appropriations made through the programs under their jurisdictions. These legislative entities (collectively, "Committees") are usually made up of citizens with certain qualifications and members of the House and Senate. For the purpose of this Advisory Opinion it will be assumed that all Committee members are public officials under Minn. Stat. § 10A.01, subd. 35 (10) and 35 (23).
2. Each committee has paid staff that helps implement its programs.
3. The Committees solicit applications for funding through various solicitation processes.
4. Applications for funding may require research or collection of data, and the written proposals may include exhibits such as maps and other data regarding the attributes and features of the projects proposed. Proposals also include detailed project budgets.
5. Applicants for funding may communicate regularly with Committee staff, both in writing and orally, prior to formal submission of the application and afterward. Generally such communications do not involve the applicant expressly urging Committee staff to

communicate with public officials about the proposal. Prior to formal submission of an application, committee staff works with all potential applicants equally.

6. After proposals are submitted, the Committee evaluates the proposals and invites some but not all applicants to appear before the Committee to present the proposal and answer any questions. In the presentation, the applicant may urge that the Committee support funding for the proposal.
7. After further evaluation of the proposals presented, the Committees give certain applicants preliminary approval for a specified appropriation level. The applicant then develops a more detailed plan for the recommended funding. There is then additional written and oral communication between the Committee staff and the applicant.
8. After finalizing the detailed plan with Committee staff, the proposal is submitted for final approval by the Committee. The Committees typically recommend a package of several proposals for funding.
9. The Committees make recommendations to the full Legislature for a vote on appropriations for the recommended projects. (The Governor also must approve the appropriation.)

Issue One

Oral communications that attempt to influence appropriation recommendations occur with the public officials serving on the Committees. Do these communications constitute lobbying for purposes of: a) registration as a lobbyist as required by Minn. Stat. § 10A.03; and/or b) reporting lobbying expenditures as required by Minn. Stat. § 10A.04?

Opinion

A person must register as a lobbyist if the person is "engaged for pay or other consideration of more than \$3,000 from all sources in any year for the purpose of attempting to influence legislative . . . action . . . by communicating or urging others to communicate with public or local officials." Minnesota Statutes Section 10A.01, subd. 21.

All of the members of the Committees are public officials. The work of the Committees eventually results in recommendations to the Legislature regarding appropriations. Communication with Committee members is, by definition, communication with public officials. Due to the fact that the Committees will ultimately make recommendations to the legislature, communication urging the Committees to include a project in their recommendations constitutes communication for the purpose of attempting to influence legislative action.

Such communications are included in the communications that may trigger a person being defined as a lobbyist under §10A.01, subd. 21. Once a person is included in the definition of a lobbyist, that person must register according to the terms of §10A.03.

Expenditures reported by a lobbyist under §10A.04, do not include the lobbyist's compensation for lobbying. Thus, if the person testifying is the lobbyist, the cost of that person's time appearing before the Committees is not reported on the lobbyist's report.

If the Nonprofit Corporation has a lobbyist who is involved in legislative action related to the proposals, but a paid staff member other than the lobbyist presents a project to the Committees, the cost of that staff member's paid time is a lobbyist disbursement that must be included on the lobbyist's disbursement report.

Issue Two

Is the preparation of written materials, including the application, supporting documentation, budgets, including editing back and forth with Committee staff, that will be presented ultimately to a Committee in support of an application for an appropriation lobbying for purposes of a) registration as a lobbyist as required by Minn. Stat. § 10A.03; and/or b) reporting lobbying expenditures as required by Minn. Stat. § 10A.04?

Opinion

The staff members of the Committees are not, themselves, public officials, so there is no direct communication with public officials that would make a person communicating with Committee staff a lobbyist under §10A.01, subd. 21. However, a person may also become a lobbyist if the person "urg[es] others to communicate with public officials" to influence legislative action.

The communication with Committee staff to develop and refine a proposal, without more, is not communication urging the staff to communicate with Committee members on behalf of the Nonprofit Corporation's proposal. Therefore, this communication could not make a person a lobbyist under §10A.01, subd. 21. However, it is possible that a fact situation could arise in which the Nonprofit Corporation's staff did, in fact, urge Committee staff to advocate the Nonprofit Corporation's proposal to the Committee. Under such a fact setting, the communication would be included in communication that could bring a person within the definition of a lobbyist and trigger the registration requirement.

If the Nonprofit Corporation has a registered lobbyist, costs of all activities that support that lobbyist's communication with public officials, including preparation of proposals to be presented, are a part of that lobbyist's reportable disbursements. This is the case whether the lobbyist's communications are with the public officials on the Committees or with legislators or legislative staff later in the process of obtaining legislative funding for the proposed project.

If the Nonprofit Corporation communicates with officials only through its non-lobbyist staff members, that communication is lobbying under Minn. Rules Part 4511.0100, subp. 3, even though the communication may not bring the staff member within the definition of a lobbyist. Since the activities supporting development of the project support the staff member's lobbying, they are reportable on the disbursement report filed by the Nonprofit Corporation's lobbyist under §10A.04, subds. 2 and 4, and Minn. Rules Part 4511.0100, subp. 4.

Issue Three

Are oral communications with the staff of the Committees that do not expressly urge the committee staff to communicate with public officials regarding appropriations that will be recommended by the Committees lobbying for purposes of a) registration as a lobbyist as required by Minn. Stat. § 10A.03; and/or b) reporting lobbying expenditures as required by Minn. Stat. § 10A.04?

Opinion

Communications that do not urge others to communicate with public officials to influence the action of those officials are not included in the communications that will bring a person into the definition of a lobbyist under §10A.01, subd. 21, with the resultant registration requirement under §10A.03.

The Board notes that the requester uses the phrase "expressly urge" in describing the communications. The statute does not include the word "expressly" and the Board does not interpret the §10A.01, subd. 21, as requiring one to "expressly urge" others to communicate with officials. Some communications could include by implication a message urging others to communicate with officials. Such communications would be included in those that could make a person a lobbyist. However, communications in the course of developing a proposal, including activities described in Issue Two, without more, would not be considered communications urging others to advocate on behalf of the proposal.

It is understood that the Nonprofit Corporation's staff will believe that their proposal has merit and should move forward. The Nonprofit Corporation's staff should use restraint in conveying that belief to staff of the Committees.

Treatment of the costs of staff communications as lobbyist disbursements follows the same criteria as described for staff work in Issue Two.

Issued August 3, 2010



Bob Milbert, Chair
Campaign Finance and Public Disclosure Board

STATUTORY AND ADMINISTRATIVE RULE CITATIONS

10A.01 DEFINITIONS

Subd. 21. **Lobbyist.** (a) "Lobbyist" means an individual:

(1) engaged for pay or other consideration of more than \$3,000 from all sources in any year for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials; or

(2) who spends more than \$250, not including the individual's own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials.

10A.03 LOBBYIST REGISTRATION.

Subdivision 1. **First registration.** A lobbyist must file a registration form with the board within five days after becoming a lobbyist or being engaged by a new individual, association, political subdivision, or public higher education system.

...

10A.04 LOBBYIST REPORTS.

Subdivision 1. **Reports required.** A lobbyist must file reports of the lobbyist's activities with the board as long as the lobbyist continues to lobby. The report may be filed electronically. A lobbyist may file a termination statement at any time after ceasing to lobby.

...

Subd. 4. **Content.** (a) A report under this section must include information the board requires from the registration form and the information required by this subdivision for the reporting period.

(b) A lobbyist must report the lobbyist's total disbursements on lobbying, separately listing lobbying to influence legislative action, lobbying to influence administrative action, and lobbying to influence the official actions of a metropolitan governmental unit, and a breakdown of disbursements for each of those kinds of lobbying into categories specified by the board, including but not limited to the cost of publication and distribution of each publication used in lobbying; other printing; media, including the cost of production; postage; travel; fees, including allowances; entertainment; telephone and telegraph; and other expenses.

Minnesota Rules

4511.0100 DEFINITIONS.

...

Subp. 3. **Lobbying.** "Lobbying" means attempting to influence legislative action, administrative action, or the official action of a metropolitan governmental unit by communicating with or urging others to communicate with public officials or local officials in metropolitan governmental units. Any activity that directly supports this communication is considered a part of lobbying.

Subp. 4. **Lobbyist's disbursements.** "Lobbyist's disbursements" include all disbursements for lobbying made by the lobbyist, the lobbyist's employer or employee, or any person or association represented by the lobbyist, but do not include compensation paid to the lobbyist.